

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 25, 2003 Session

**SHARP MANUFACTURING COMPANY OF AMERICA v.
NICOLE M. SULLIVAN v. THE YASUDA FIRE & MARINE
INSURANCE COMPANY OF AMERICA**

**Direct Appeal from the Circuit Court for Shelby County
No. CT-003350-00 Robert L. Childers, Circuit Judge**

No. W2002-00857-SC-WCM-CV - Mailed July 7, 2003; Filed October 22, 2003

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code. Ann. Section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial found the plaintiff suffered a 50 percent disability to her body as a whole as a result of injury to her leg and abdomen, obviously applying the 2 ½ times multiplier to the treating physician's impairment rating. As discussed below, the panel has concluded the evidence does not preponderate against the trial court's findings and we affirm.

**Tenn. Code Ann. § 50-6-225(e) (2000 Supp.) Appeal as of Right; Judgment of the
Circuit Court Affirmed**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and D. J. ALISSANDRATOS, SP. J., joined.

Ronald L. Harper and R. Scott Vincent, Memphis, Tennessee, for appellants, Sharp Manufacturing and Yasuda Fire and Marine Insurance Company.

Ben L. Daniel, Memphis, Tennessee, for appellee, Nicole Sullivan

MEMORANDUM OPINION

The employee, or claimant, Nicole Sullivan, initiated this action to recover workers' compensation for an accidental injury to her leg and abdomen resulting from an accident occurring at her place of employment on July 20, 1998. Following the trial of this case on February 26, 2002, the trial court awarded, among other things, permanent partial disability at 50% to the body as a whole. Appellants have appealed on the grounds the trial judge erred by accepting the impairment

rating of Dr. Economides at 20% and applying the 2 ½ times multiplier to this impairment instead of accepting the impairment rating of Dr. Adams at 10%.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code. Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). When a trial court has seen and heard the witnesses, especially where the issues of credibility and weight of oral testimony are involved, considerable deference must be accorded the trial court's factual findings. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). However, where the issues involve expert medical testimony which is contained in the record by depositions, as it is in this case, then all impressions of weight and credibility must be drawn from the contents of the deposition, and the reviewing court may draw its own impression as to weight and credibility from the contents of the deposition. *Overmon v. Williams Sonoma, Inc.*, 830 S.W.2d 672, 676-77 (Tenn. 1991).

Appellants are not contesting the fact that appellee was injured in the course and scope of her employment. During the course of her treatment, a skin graft was performed with skin from her lower abdomen, which resulted in hypertrophic scarring to her abdomen at the donor site.

Appellants aver the trial court erred by accepting the testimony of Dr. Economides over the testimony of Dr. Adams and the Functional Capacity Evaluation (FCE) evaluation by Mr. Armstrong, as to impairment rating. Dr. Economides, the treating physician, began his treatment four days after the injury and remained her treating physician until she was released from continuous care. Dr. Adams saw her for an independent medical evaluation, and Mr. Frank Armstrong conducted the FCE.

Further, appellants aver the trial judge erred by admitting certain evidence, photographs and employer write-up. In the evaluation of evidence it is in the sound discretion of the trial court to conclude that the opinion of certain experts should be accepted over that of others. *Hinson v. Wal-Mart Stores, Inc.*, 654 S.W.2d 675 (Tenn. 1983). Further, the trial court may give more weight to the treating physician's testimony under certain circumstances. *Nash v. Old Republic Ins. Co.*, No. 02501-9512-CV-001231 (Tenn. May 17, 1996).

In this case Dr. Economides used the AMA Guidelines to place claimant in a Class II, because he believed she will need intermittent to continuous treatment due to the fact that muscle damage resulted in her left leg being slightly more than 2 inches shorter than her right leg, and that she has difficulty standing, walking and running and is in constant pain. He gave her an impairment rating of 20%. She also has scarring at the donor site.

Dr. Adams is an independent medical evaluator, and rated only the cosmetic effect of the injury. He testified he was not otherwise qualified to provide an opinion if a muscle was involved. Mr. Frank Armstrong testified that 75% of his testimony has to do with "psychometrics," and that 98% of the time he does "psychometrics" for workers' compensation insurance companies.

Certainly the trial court was within the exercise of its sound discretion to accept the testimony of Dr. Economides as to impairment.

Appellants aver the court was in error in admitting photographs which showed the extent of the injury and disciplinary write ups which were admitted to bolster claimant's argument that her injury was affecting her job. Clearly the admission of such evidence is within the discretion of the trial court, and such argument is completely without merit.

Appellants finally argue the trial court erred in using the 2 ½ times multiplier according to statute. Appellee was 25 years of age at the time of her injury. She has a high school education with only assembly line experience. She is restricted in standing, walking and running and is in constant pain. Her left leg is slightly more than 2 inches shorter than her right leg. Certainly the trial court's award of 2 ½ times the multiplier pursuant to statute is within the court's discretion.

After considering all the relevant factors in this case, we find the evidence in this case does not preponderate against the trial court's award.

CONCLUSION

The judgment of the trial court is affirmed. The costs of this appeal are taxed to the appellants, Sharp Manufacturing Company of America and Yasuda Fire and Marine Insurance Company.

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON
March 25, 2003 Session

**SHARP MANF. CO. OF AMERICA v. NICOLE M. SULLIVAN
v. YASUDA FIRE & MARINE
INSURANCE CO. OF AMERICA**

**Shelby County Circuit Court
No. CT-003350-00**

No. W2002-00857-SC-WCM-CV - Filed October 22, 2003

ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the appellants.

IT IS SO ORDERED this 22nd day of October, 2003.

PER CURIAM

Holder, J. - Not participating.